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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 696

THE UNITED STATES OF AMERICA, APPELLANT

vs.

JACK MILLER AND FRANK LAYTON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS

FILED FEBRUARY 20, 1939

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135589—39

[Citation in usual form showing service on Paul E. Gotensohn, filed Feb. 1, 1939, omitted in printing.]

[Caption omitted.]

United States of America *vs.* Jack Miller and Frank Layton. 3926. Indictment for Violation Section 1132j, Title 26 U. S. C.

In United States District Court

cket entries and minute entries showing return of indictment, ling of demurrer and entry of order, and judgment sustaining demurrer

ept. 21, 1938. Indictment returned and filed.
an. 3, 1939. Demurrer to indictment filed by defendants.
an. 3, 1939. Order sustaining demurrer to indictment and indictment quashed. Plaintiff excepts.

In United States District Court, Western District of Arkansas, Fort Smith Division

Indictment filed Sept. 21, 1938

n the District Court of the United States, in and for the Western trict aforesaid, at the June Term thereof, A. D. 1938.

The Grand Jurors of the United States, impaneled, sworn, and rged at the Term aforesaid, of the Court aforesaid, on their oath sent, that Jack Miller and Frank Layton on the 18th day of ril, in the year of our Lord nineteen hundred thirty-eight, in the rt Smith Division of said district and within the jurisdiction of d Court, did unlawfully, knowingly, wilfully, and feloniously nsport in interstate commerce from the town of Claremore in the te of Oklahoma to the town of Siloam Springs in the State of kansas a certain firearm, to-wit, a double barrel 12-gauge Stevens tgun having a barrel less than 18 inches in length, bearing identition number 76230, said defendants, at the time of so transporting said firearm in interstate commerce as aforesaid, not having nstered said firearm as required by Section 1132d of Title 26, ited States Code (Act of June 26, 1934, c. 737, Sec. 4, 48 Stat. 7), and not having in their possession a stamp-affixed written er for said firearm as provided by Section 1132c, Title 26, United tes Code (June 26, 1934, c. 737, Sec. 4, 48 Stat. 1237) and the ulations issued under authority of the said Act of Congress known he "National Firearms Act" approved June 26, 1934, contrary to form of the statute in such case made and provided, and against peace and dignity of the United States.

CLINTON R. BARRY,
United States Attorney.
By DUKE FREDERICK,
Assistant United States Attorney.

5 No. 3926. District Court of the United States, Western District of Arkansas. The United States vs. Jack Miller and Frank Layton. Indictment. 1 ct. Sec. 1132j, T. 26 USC. A true bill. Richard R. Thompson, Foreman.

[File endorsement omitted.]

6 IN UNITED STATES DISTRICT COURT

Demurrer to indictment

Filed Jan. 3, 1939

Come the defendants, Jack Miller and Frank Layton, and demur to the indictment, and for grounds thereof state:

1. That the indictment fails to state sufficient facts to constitute a crime under the laws and statutes of the United States.

2. That the alleged criminal act contained in the indictment as a violation of Title 26, Section 1132, United States Code, an Act of Congress known as the National Firearms Act, approved June 26th, 1934, and the provisions thereof, is not a revenue measure and is an attempt to usurp the police powers of the State and reserved to each of the States in the United States, is unconstitutional and therefore does not state facts sufficient to constitute a crime under the statutes of the United States.

3. That the Second Amendment to the Constitution of the United States provides: "A well regulated militia being necessary to the security of a free state, the right of people to keep and bear arms shall not be infringed;" that the said "National Firearms Act" is in violation and contrary to said Second Amendment and particularly as charging a crime against these defendants under the allegations of the indictment, is unconstitutional and therefore does not state facts sufficient to constitute a crime under the statutes of the United States.

4. That the indictment herein charges the violation of Section 1132 (c) in which it is made unlawful to transfer a firearm
7 which has previously been transferred on or after the 30th day of June 1934, in addition to complying with subsection (c), transfers therewith the stamp affixed order; that there is no charge in the said indictment that the said defendants made any transfer whatsoever of the double-barrel 12 guage shotgun having less than 18 inches in length, and said indictment, therefore, does not charge facts sufficient to constitute a crime under the laws and statutes of the United States.

5. That the indictment charges the defendants with "not having in their possession a stamp affixed written order for said firearms, as provided and required by Section 1132 (c), Title 26, United States Code, and the regulations issued under the authority of said Act of Congress known as the National Firearms Act, approved June 26th, 1934;" that said Section 1132 (c) does not make it a violation

merely fail to possess a stamp affixed written order for said fire-ms, and a failure to charge a transfer by or to the said defendants, ils to set forth facts sufficient to constitute a crime under the laws d statutes of the United States.

6. That any provision of the said National Firearms Act; approved ne 26th, 1934, which requires a registration of the said firearm as quired by Section 1132 (d) of Title 26 United States Code, and t having in their possession a stamp affixed order for said firearm provided by Section 1132 (c) Title 26 United States Code, is in olation and contrary to the said Second Amendment to the Consti-tion of the United States, is unconstitutional and does not state cts sufficient to constitute a crime under the statutes of the United States and the indictment further does not state sufficient facts to constitute a crime under the laws and statutes of the United States in that there was a total failure to charge a transfer of id firearms by or to the said defendants.

PAUL E. GUTENSOHN,
Attorney for Defendants.

In United States District Court.

Memorandum opinion

Filed January 3, 1939

The defendants in this case are charged with unlawfully and feloni-sly transporting in interstate commerce from the town of Clare-ore, Oklahoma, to the town of Siloam Springs in the State of rkansas, a double barrel twelve gauge shot gun having a barrel less an eighteen inches in length, and at the time of so transporting said e arm in interstate commerce they did not have in their possession stamp-affixed written order for said fire arm as required by Section 32 c, Title 26 U. S. C. A., and the regulations issued under the thority of said Act of Congress known as the National Fire Arms ct.

The defendants in due time filed a demurrer challenging the suffi-ncy of the facts stated in the indictment to constitute a crime and rther challenging the sections under which said indictment was urned as being in contravention of the Second Amendment to the nstitution of the United States.

The indictment is based upon the Act of June 26, 1934, C. 757, ction 11, 48 Statute 1239. The court is of the opinion that this ion is invalid, in that it violates the Second Amendment to the nstitution of the United States providing, "A well regulated militia ng necessary to the security of a free state, the right of the people eep and bear arms, shall not be infringed."

The demurrer is accordingly sustained.

This the 3rd day of January 1939.

HEARTSILL RAGON,
United States District Judge.

10 In United States District Court

Judgment sustaining demurrer

Entered January 3, 1939

This January 3, 1939, comes the United States of America by Clinton R. Barry, Attorney for the Western District of Arkansas, and come defendants, Jack Miller and Frank Layton, in their own proper persons, and by Paul E. Gutensohn, their attorney, and comes on to be heard the demurrer of said defendants to the indictment in the above entitled cause.

The demurrer is argued by counsel and submitted, and upon consideration thereof it is by the court considered, ordered and adjudged that the demurrer be and is hereby sustained and that the indictment herein be and is hereby quashed.

To which ruling, order and judgment the plaintiff, United States excepts.

11 In United States District Court

Petition for appeal

Filed January 30, 1939

Comes now the United States of America, plaintiff herein, and states that on the 3rd day of January 1939, a demurrer of the defendants Jack Miller and Frank Layton to the indictment herein was by the court sustained, and the plaintiff feeling aggrieved at the ruling of the District Court sustaining said demurrer, prays that it may be allowed to appeal to the Supreme Court of the United States for a reversal of said judgment and order and that a transcript of record in this cause duly authenticated may be sent to said Supreme Court of the United States.

Petitioner submits and presents to the court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause.

UNITED STATES OF AMERICA.
CLINTON R. BARRY,
United States Attorney,
Western District of Arkansas.

12 In United States District Court

Assignments of error

Filed January 30, 1939

Comes now the United States of America by Clinton R. Barry, United States Attorney for the Western District of Arkansas, and

avers that in the record proceedings and judgment herein there is manifest error and against the just rights of the said plaintiff, in this, to-wit:

1. That the court committed material error against the plaintiff in holding that Section 11 of the National Firearms Act of June 26, 1934, c. 757, 48 Stat. 1236, 1239, is invalid as violating the Second Amendment to the Corstitution of the United States providing that "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

2. That the court committed material error against the plaintiff in sustaining the demurrer of the defendants Jack Miller and Frank Layton to the indictment.

CLINTON R. BARRY,
United States Attorney,
Western District of Arkansas.

17 In United States District Court

Order allowing appeal to the Supreme Court of the United States

Entered January 30, 1939

This cause having come on this day before the court on the petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for a reversal of the judgment herein sustaining the demurrer interposed by the defendants Jack Miller and Frank Layton to the indictment in the said cause, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court of the United States, and the court having heard and considered said motion, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the clerk of this court, it is, therefore, by the court ordered and adjudged that the plaintiff herein, the United States of America be, and it is hereby allowed an appeal from the order and judgment of this court in sustaining the demurrer of the defendants to the indictment, to the Supreme Court of the United States, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court.

It is further ordered that the United States of America be, and it is hereby permitted a period of forty days from the date hereof in which to file and docket said appeal in the Supreme Court of the United States.

Dated at Fort Smith, Arkansas, this 30th day of January 1939.

By the Court:

HEARTSILL RAGON,
District Judge.

20 In United States District Court

Praecipe for transcript of record

Filed Feb. 1, 1939

To the CLERK,
United States District Court, Western District of Arkansas:

The appellant hereby directs that in preparing transcript of record in this cause in the United States District Court for the Western District of Arkansas, in connection with its appeal to the Supreme Court of the United States, you include the following:

1. Docket entries and minute entries showing return of indictment, filing of demurrer and entry of order and judgment sustaining demurrer.
2. Indictment.
3. Demurrer.
4. Opinion.
5. Judgment sustaining demurrer.
6. Petition for appeal to the Supreme Court.
7. Statement of jurisdiction of Supreme Court.
8. Assignments of Error.
9. Order allowing appeal.
10. Notice of service on appellee of petition for appeal, order allowing appeal, assignments of error, and statements as to jurisdiction.
11. Citation.
12. Praecipe.

CLINTON R. BARRY,
United States Attorney,
Western District of Arkansas.

21 [Clerk's certificate to foregoing transcript omitted in printing.]

22 In Supreme Court of the United States

Statement of points relied upon and designation of entire record for printing

Filed March 17, 1939

Pursuant to Rule XIII, Paragraph 9, of this Court, appellant states that it intends to rely upon all of the points in its assignment of errors.

Appellant deems the entire record, as filed in the above entitled cause, necessary for the consideration of the points relied upon.

ROBERT H. JACKSON,
Solicitor General.

[File endorsement omitted.]

[Endorsement on cover:] File No. 43181. W. Arkansas. D. C. U. S. Term No. 696. The United States of America, Appellant, vs. Jack Miller and Frank Layton. Filed February 20, 1939. Term No. 696 O. T. 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1939